



1 At the conclusion of the November 22, 2016 settlement conference, the mediation  
2 convened in open court to establish on the record the terms of the settlement agreement. (*See*  
3 ECF Nos. 11, 34.) The terms of the settlement stated on the record and agreed upon among the  
4 parties and counsel were as follows:

- 5 1. The settlement of the case would not affect plaintiff's legal rights with respect to  
any actions that occurred after the date of settlement.
- 6 2. The NDOC would schedule within thirty days of the final execution of the  
7 agreement, a consultation with Dr. Lundeen or another appropriate foot specialist.  
Any treatment recommendation would be submitted to the Utilization Review  
8 Panel for review and consideration.
- 9 3. Plaintiff could request placement on the chronic care list.
- 10 4. The NDOC would remove all department debt owed as of the date the parties  
entered into the agreement, for an amount totaling \$171.36.
- 11 5. Plaintiff would dismiss the case with prejudice.
- 12 6. Plaintiff would be relieved of his obligation to pay the \$350 filing fee.
- 13 7. The parties understood and agreed that they had a binding settlement agreement  
that day, that the agreement would be memorialized in writing.

14 (*See* ECF No. 34 at 14-15.)

15 When the mediator, counsel, and the parties put the settlement terms on the record, the  
16 mediator inquired of all present a number of times if there were any clarifications or questions  
17 concerning the settlement. Initially, plaintiff responded that he did not agree to the terms, so the  
18 mediator helped the parties come up with the additional term outlined as term number one above.  
19 When asked again, with the additional term added, plaintiff stated that he had no questions or  
clarifications, and he had no additional terms to be placed on the record.

20 On November 30, 2016, counsel for defendants drafted and sent plaintiff the settlement  
21 documents. (*See* ECF Nos. 18-1; 18-2.) On December 12, 2016, plaintiff sent correspondence to  
22 defendants' counsel stating he refused to sign the settlement agreement. (*See* ECF No. 18-3.)  
23 Defendants' present motion followed.

## 24 **II. MOTION TO ENFORCE SETTLEMENT AGREEMENT**

25 Courts have inherent authority to enforce settlement agreements between parties in  
26 pending cases. *See Metronet Services Corp. v. U.S. West Communications*, 329 F.3d 986, 1013-  
27 1014 (9th Cir. 2003). (*cert. granted and judgment vacated on other grounds by Quest Corp. v.*  
28 *Metronet Services Corp.*, 540 U.S. 1147 (2004); *Doi v. Halekulani Corporation*, 276 F.3d 1131,

1 1136-1138 (9th Cir. 2002); *In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 957, (9th Cir. 1994).  
2 Moreover, a material term of this settlement agreement was that the court retained jurisdiction  
3 over the settlement until the stipulation for dismissal was lodged with the Clerk of Court.

4 To enforce a settlement agreement, two elements must be satisfied. *Marks-Foreman v.*  
5 *Reporter Pub Co.*, 12 F.Supp 1089, 1092 (S.D.Cal. 1998). First, the settlement agreement must  
6 be complete. *Id.*, citing *Maynard v. City of San Jose*, 37 F.3d 1396, 1401 (9th Cir. 1994); *Doi*,  
7 276 F.3d at 1137. Second, the settlement agreement must be the result of an agreement of the  
8 parties or their authorized representatives concerning the terms of the settlement. *Marks-*  
9 *Foreman*, 12 F.Supp at 1092, citing *Harrop v. Western Airlines, Inc.*, 550 F.2d 1143, 1144-1145  
10 (9th Cir. 1977), *Doi*, 276 F.3d at 1137-1138. Where parties raise objections after the parties agree  
11 to a settlement, the court may rightfully deny such objections. *Harrop*, 550 F.2d at 1144.

12 The court must first consider whether the settlement agreement was complete. *Marks-*  
13 *Foreman*, 12 F.Supp at 1092. In this case, as in *Doi*, 276 F.3d 1131, the parties spent several  
14 hours in private and joint sessions and agreed to a settlement of this case. The parties and counsel  
15 then reconvened in open court to place the material terms of the agreement into the record (*See*  
16 ECF Nos. 11, 34). The parties and counsel stated that they understood and agreed that they had a  
17 binding settlement that day, that the terms could not be changed, even though a written settlement  
18 agreement memorializing the terms would follow. The settlement was complete on November  
19 22, 2016, when the parties agreed to each material term.

20 The court must then consider whether the settlement agreement was the result of an  
21 agreement of the parties or their authorized representatives. *Marks-Foreman*, 12 F.Supp at 1092.  
22 Plaintiff seems to argue that no one with settlement authority was present during the mediation.  
23 (ECF No. 27 at 8.) However, an examination of those present at the mediation shows that an  
24 NDOC representative and State representative, both with settlement authority, were present. (*See*  
25 ECF No. 11.) Therefore, there is no dispute that plaintiff and defendants' authorized  
26 representative agreed to the stated terms of the settlement, which were later reduced to writing in  
27 the settlement agreement, attached as Exhibit A-1 to defendants' motion (ECF No. 18).

1 Plaintiff's main contention about the settlement agreement is that it asks him to "waive[]  
2 his human rights" to further litigate issues related to his on-going foot conditions. (ECF No. 27 at  
3 4.) The court reviewed the entire transcript of the hearing, and there is certainly no discussion  
4 about "waiving" plaintiff's constitutional and legal rights. In fact, the settlement agreement  
5 specifically states that it "does not apply to any future events or acts creating any new claims that  
6 may arise or occur after the final execution by all parties...." (ECF No. 18-2 at 3.) Further,  
7 plaintiff agreed on record to dismiss the case with prejudice. (ECF No. 34 at 14-15.)

### 8 III. CONCLUSION

9 Based upon the foregoing, the court concludes that the parties entered into a binding  
10 settlement agreement, in open court, on November 22, 2016. The court recommends that  
11 defendants' motion to enforce settlement agreement (ECF No. 18) be granted.

12 The parties are advised:

13 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of  
14 Practice, the parties may file specific written objections to this Report and Recommendation  
15 within fourteen days of receipt. These objections should be entitled "Objections to Magistrate  
16 Judge's Report and Recommendation" and should be accompanied by points and authorities for  
17 consideration by the District Court.

18 2. This Report and Recommendation is not an appealable order and any notice of  
19 appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's  
20 judgment.

### 21 IV. RECOMMENDATION

22 **IT IS THEREFORE RECOMMENDED** that defendants' motion to enforce settlement  
23 (ECF No. 18) be **GRANTED**. The parties shall submit the stipulation and order dismissing this  
24 case with prejudice within ten days of the date of the District Court's order adopting this report  
25 and recommendation.

26 **DATED:** May 15, 2017.

27   
28 **UNITED STATES MAGISTRATE JUDGE**